KOK KEAT @ KOK LUP & ANOR.

v.

PENTADBIR TANAH DAERAH PETALING

HIGH COURT MALAYA, SHAH ALAM
DATO' K.C. VOHRAH J.
[CIVIL APPLICATION NO. 15-3-92]
29 SEPTEMBER 1994

LAND ACQUISITION: Award of compensation for land to be acquired - Land classified as "agricultural" but situated in industrial area - Basis of award of compensation - Land having no authorised access - Whether has any bearing on value of land - Consideration of s. 390 of National Land Code 1965 - Whether owners of land can apply for a Land Administrators right of way to give access to a public road - Compensation fixed by reference to comparable lots - Whether reliance could be placed on the value of post notification transactions - Whether account should be taken of high visibility of subject lot from Federal Highway - Compensation award made on the basis of the development potential of the land as an industrial lot - Whether award should include compensation for the fruit trees cultivated on the land - Whether land owners entitled to reimbursement of surveyor's fees incurred.

The Selangor State Government published a declaration of intended acquisition, on 26 September 1990, under s. 8 of the Land Acquisition Act 1960. It was not disputed that the subject lot was an agricultural lot situated in the midst of an industrial area. Neither was it disputed that the subject lot had no authorised access to a public road. On 28 December 1991, the Collector valued the subject lot at RM7.95 per square foot based on the report of the Government Valuer.

The Government Valuer had compared the subject lot to Lot 973 and Lot 550 in the same mukim and daerah to arrive at the value of the subject lot notwithstanding the fact that the comparable lots were 3 and 5 kilometres away respectively from the subject lot. The Government Valuer had failed to consider two other lots (Lot 47 and Lot 252) which were nearer to the subject lot and which were transacted quite close in time and were more similar to the subject lot.

The owners of the subject lot filed an objection to the amount of compensation awarded and also sought compensation for the loss of fruit trees cultivated on the land and reimbursement of the surveyor's fees incurred.

Held:

[1] Lot 252 was the better lot for comparison. Although Lot 252 was a post notification transaction, if such transactions are close in time to the valuation date of the scheduled land and the lots possess features which are more or less similar to the lot of which the scheduled land forms part, such transactions do afford a pointer as to whether the value given for the land compulsorily acquired is fair or not.

[2] Lot 252 was transacted barely two months after notification of the intended acquisition of the subject lot and the Government Valuer who prepared her report on 12 December 1991 should have been aware of the transaction. She would have noticed that Lot 252 was an agricultural lot, it was near to the subject lot and it had potential for development in the industrial area in which the subject lot was located. In the circumstances the said transaction at RM9 per square foot does appear to afford a fair criterion of the value of the subject property on the date of acquisition.

[3] Although it was true that the subject lot had no proper authorised access from anywhere outside its borders to the said land when compared to Lot 252, the Government Valuer had failed to realise that application could have been made by the owners of the subject lot for the creation of a Land Administrator's right of way to give access to a public road under s. 390 of Part 28 of the National Land Code 1965. In all the circumstances of the subject lot being cut off on all sides, the real likelihood of having a right of way created on the adjacent lots to the public road had to be positively viewed.

[4] In view of the development potential of the subject lot as an industrial lot, the subject lot had to be given a market value which reflected the value not only by reference to the use to which the land was being put at the time at which its value is to be determined, but also by reference to the use to which the land is reasonably capable of being put in the future. In addition the value of the land should also take into account the high visibility of the subject lot from the Federal Highway. In all the circumstances, the award for compensation should be increased to RM9.50 per square foot.

[5] The objectors' claim for compensation for the loss of fruit trees on the subject lot must necessarily fail bearing in mind that when agricultural land in the vicinity of commercial quarters is valued as building site, the owner is not entitled to the value of the trees on the ground that they are fruit bearing trees. If the Court puts a fictitious value on the property on account of its so called potentiality for building purposes, then it is an all inclusive rate and nothing can be allowed in addition for trees.

[6] Insofar as the objectors' claim for reimbursement of the surveyor's fees is concerned, the Court is bound by the Supreme Court decisions in *Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co. Ltd* and *Harrisons & Crossfields (M) Sdn. Bhd. v. Pemungut Hasil Tanah, Wilayah Persekutuan* which held that there was nothing in the provisions of the Land Acquisition Act 1960 and the Schedule thereto to justify the making of an award to include the surveyor's fee.

[Objection allowed with costs. Collector's award increased to RM1,112,136].

Cases referred to:
Loong Heng Sun @ Liang Aing Tan v. Collector of Land Revenue, Kedah [1992] 3 CLJ 1612 ***(foll)***
Si Rusa Inn Sdn. Bhd. & Ors. v. The Collector of Land Revenue, Port Dickson & Ors. [1987] 1 MLJ 147 ***(refd)***
Highlands Malaya Plantation Ltd. v. Collector of Land Revenue, Petaling [1981] CLJ 174 ***(foll)***
Collector of Thana v. Chaturbhuj Radhe Krishna AIR 1926 Bom 365 ***(foll)***
Tharreesamma v. Deputy Collector, Cochin AIR 1924 Mad 252 ***(foll)***
Consolidated Plantation Bhd. v. Pemungut Hasil Tanah Kelang [1984] 1 MLJ 273 ***(not foll)***
Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co. Ltd. [1990] 1 CLJ 707 ***(foll)***

Legislation referred to:
Land Acquisition Act 1960, s. 8
National Land Code 1965, ss. 389, 390(3)

For the objectors - K.S. Ong; M/s. K.S. Ong & Co.
For the respondent - Zaharah Ibrahim, State Legal Adviser

JUDGMENT

K.C. Vohrah J:
In this case the subject lot, Lot 305, is bordered in the south by a strip of railway reserve land on which runs a railway track, in the north by the Federal Highway with no

authorised access to the subject lot, in the west by Lot 306 and in the east by Lot 313. Next to Lot 313 is Lot 304, after which there is a public road, Jalan Puchong.

That at the time of the date of the declaration of intended acquisition under s. 8 of the Land Acquisition Act 1960 in the Selangor State **Gazette** notification No. 759 i.e. 26 September 1990, the subject lot, an agricultural lot situated in Mukim Damansara, Daerah Petaling was in the midst of an industrial area is not disputed. On the subject lot a motor cycle workshop was located and access to the workshop appeared to be from the Federal Highway, *albeit*, it was an unauthorised access.

The Collector on 28 December 1991 valued the subject lot, trapezoidal in shape and measuring 117,067 sq. feet (2.6875 acres), at RM930,330 which works out to RM7.95 per sq. foot. The Government Valuer, PW1, had compared the subject lot to Lot 973 and Lot 550 in the same mukim and daerah to arrive at the value of RM7.95 per square foot for the subject lot. But Lot 973, an odd shaped piece of land (transacted on 5 September 1991 at RM7.35 per square foot), and Lot 550 (transacted on 22 November 1990 at RM7.57 per square foot) were 3 and 5 kilometres away respectively from the subject lot although both were agricultural lots. They had potential for industrial use as claimed by the Government Valuer because of their close proximity to light industry zones but the fact remains that there were 2 other lots which were so much nearer to the subject lot and which were transacted quite close in time to the subject lot and they were definitely, like the subject lot, in an industrial area. These two lots, Lot 252 (transacted in November 1990 at RM9 per square foot) and Lot 47 (transacted in October 1981 at RM19 per square foot), which the Private Valuer took into consideration, were more similar in nature to the subject lot than the 2 lots used by the Government Valuer for comparison.

Lot 47 was an industrial lot and its proximity to the subject lot should have given an indicator to the Government Valuer that land values were by no means as low as those lots taken by her as comparable lots. However Lot 252 was the better lot for comparison. As was pointed out earlier, the date of the declaration for intended acquisition for the subject lot was 26 September 1990 and Lot 252 was a post notification transaction, it having taken place in November 1990. In *Loong Heng Sun @ Liang Aing Tan v. Collector of Land Revenue, Kedah* [1992] 3 CLJ 1612 at 1615 I had occasion to observe as regards reliance on post notification transactions (basing my observation on *Assistant Development Office v. Tayaballi* AIR 1933 Bom 361) the following:

> There may be other reasons for attaching little or no value to post notification transactions, and that would depend on the peculiar circumstances of each case but ordinarily if post notification transactions are close in time to the valuation date of the scheduled land and the lots possess features which are more or less similar to the lot of which the scheduled land forms part, such transactions do afford a pointer as to whether the value given for the land compulsorily acquired is fair or not.

Now Lot 252 was transacted barely two months after notification of the intended acquisition of the subject land and the Government Valuer who prepared her report on 12 December 1991 should have been aware of the transaction. She would have noticed that Lot 252 was an agricultural lot and that it was near to the subject lot and that it had potential for development in the industrial area in which the subject lot and Lot 47 were located. The said transaction at RM9 per square foot does appear to afford a fair criterion of the value of the subject property on the date of acquisition and account should also have been taken of the high visibility of subject lot from the Federal Highway.

The single apparent disadvantage the subject lot had at the date of acquisition when compared with Lot 252 was that there was no proper and authorised access from anywhere outside its borders to the said land. The Government Valuer while acknowledging that the area round the subject lot was an industrial area with the Hi-Tech Industrial Park and the Kawasan Perumahan Section 15, Shah Alam situated therein was of the view that the subject lot had potential for development if there was access from the Federal Highway. But with respect, the Government Valuer failed to realise that application could have been made by the owners of the subject lot for the creation of a Land Administrator's right of way to give access to a public road under Part Twenty Eight of the National Land Code. There could be an application under s. 390 of the Code for the creation of the Land Administrator's right of way through Lots 313 & 304 to the public road running along the eastern border of Lot 304, Jalan Puchong, which would have allowed the proprietors of the said land and persons acting with the express or implied consent of the proprietors to pass or repass between the said two lots and the public road (see s. 389 of Code). The Land Administrator would need to hold an inquiry under s. 390(3) and he, "if ... he is satisfied that it is expedient for a private ... right of way to be created, shall make an order creating the right of way." I think in all the circumstances of the subject lot being cut off on all sides the real likelihood of having a right of way created on the two lots to the public road had to be positively viewed bearing in mind the example used by Peh Swee Chin J. (as he then was) in the case of *Si Rusa Inn Sdn. Bhd. & Ors. v. The Collector of Land Revenue, Port Dickson & Ors.* [1987] 1 MLJ 147 at 153:

> Looking at the said Collector, it is difficult also to imagine a less urgent necessity or situation than that before the said Collector. It is neither desirable nor easy to specify such urgent or grave situations. I feel I ought to give an example at least. It is conceivable that in the old days when agricultural land was subdivided, no provision was ever made for surrender of portions of land for road reserve for access to a public road from land-locked interior lots, with the result that should the owners of lots with frontage to such public road decide to seal up their borders or boundaries, some occupiers would be completely denied any access at all to such public road. There is thus an urgent necessity, or a grave situation which would make it expedient for a Collector to grant a right of way against those favourably-placed landowners, against the principle of inviolateness of land.

In my view Lot 305 in view of its developmental potential as an industrial lot had to be given market value which "reflects not only the value by reference to the use to which the land was being put at the time at which its value is to be determined, but also by reference to the use to which the land is reasonably capable of being put in the future" (see *Highlands Malaya Plantation Ltd. v. Collector of Land Revenue, Petaling* [1981] CLJ 174). And the value should also take into account its high visibility from the Federal Highway. In my view the award should be increased to RM9.50 a square foot.

The objectors have claimed for compensation for the loss of fruit trees on the subject lot. The claim must necessarily fail bearing in mind that "if the Court puts a fictitious value on the property on account of its so called potentiality for building purposes, then it is an inclusive rate and nothing can be allowed in addition for trees" (*Collector of Thana v. Chaturbhuj Radhe Krishna* AIR 1926 Bom 365). In *Tharreesamma v. Deputy Collector, Cochin* AIR 1924 Mad 252 it was held that when agricultural land in the vicinity of commercial quarters is valued as building site, the owner is not entitled to the value of the trees on the ground that they are fruit bearing trees.

The objectors have also argued that they are entitled to reimbursement of surveyor's fees incurred by them in the proceedings before the Collector and rely on *Consolidated Plantation Bhd v. Pemungut Hasil Tanah Kelang* [1984] 1 MLJ 273, a Federal Court decision. I am however bound by the decision of the then Supreme Court in *Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co. Ltd*. [1990] 1 CLJ 707 at 712 where Harun Hashim SCJ stated:

> The learned Judge ordered reimbursement of surveyor's and engineer's fees incurred by the respondents in the objection proceedings to the award of the Collector under s. 14(5) and on the authority of *Consolidated Plantation Bhd. v. Pemungut Hasil Tanah Klang* [1984] 1 MLJ 273. It is true that an award of surveyor's fee at 1% (amounting to RM104,740) was made in that case but as there was no appeal on that part of the award the Federal Court did not deal with it. The claim for surveyor's fees, however, was dealt with by the Supreme Court in *Harrisons & Crossfields (M) Sdn. Bhd. v. Pemungut Hasil Tanah, Wilayah Persekutuan* [1988] 2 MLJ 299 where such a claim was dismissed on the ground that there is
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> > nothing in the provisions of the Land Acquisition Act 1960 and the Schedule thereto to justify the making of an award to include the surveyor's fee. *Consolidated Plantation Bhd. v. Pemungut Hasil Tanah Kelang* is not an authority for allowing the surveyor's fee as the Federal Court judgment clearly states that it was confined only to the question of adequacy of the award of RM231,000 as the cost of turfing as compensation for the loss of water supply to the mill.
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> at page 300. We would accordingly allow this part of the appeal.

In all the circumstances of the matter my view is that the collector's award should be increased to RM1,112,136. The objectors are entitled to the costs of these proceedings. There shall be a refund of the deposit paid by the objectors.